

COUNTY OF YORK

MEMORANDUM

DATE: June 12, 2000 (BOS Mtg. 6/20/00)
TO: York County Board of Supervisors
FROM: Daniel M. Stuck, County Administrator
SUBJECT: Application No. UP-556-00, Peninsula Hardwood Mulch, Inc.

ISSUE

Application No. UP-556-00 is a request pursuant to Section 24.1-801(a)(2) of the York County Zoning Ordinance, to authorize the expansion of a legally existing non-conforming use. The applicant wants to add mulch-processing equipment to the existing soil screening activities on the site. The property is located at 715 Lakeside Drive (Route 620) and zoned for RC-Resource Conservation uses. The parcel is further identified as Assessor's Parcel No. 30-62.

DESCRIPTION

Property Owner: Clinton C. Gardner
Location: 715 Lakeside Drive (formerly 105 Lakeside Drive)
Area: 46.4 acres
Frontage: 600 feet
Utilities: Public water and sanitary sewer available
Topography: Relatively flat

2015 Land Use Map Designation: Medium Density Residential

Zoning Classification: RC - Resource Conservation

Existing Development: Peninsula Hardwood Mulch, Inc.

Surrounding Development:

North: Single-family residences and Grafton Station Apartments beyond

East: Winder's Pond planned development

South: Quartermarsh Estates

West: An 11-resident group home, Lakeside Drive Forest subdivision, and York Crossing townhouses

Proposed Development: The establishment of mulch hammer mill operation

ANALYSIS

1. The applicant is requesting authorization to expand a nonconforming use¹ by adding mulch-processing equipment known as a hammer mill to the existing Peninsula Hardwood Mulch, Inc., operation located on Lakeside Drive. According to the Zoning Ordinance, a nonconforming use is a *lawfully established use or activity which complied with the regulations in effect at the time of its establishment, but which fails by reason of adoption of or subsequent amendment to this chapter to conform to the present requirements of the zoning district in which located*. According to Section 24.1-801(a)(2) of the Zoning Ordinance, a property owner may apply for an expansion of a nonconforming use through the issuance of a special exception, which shall be processed and administered in the same way as are special use permits. In addition to the standards set out for processing use permits, the Board shall consider whether the character of the existing use will be preserved in the event of the proposed enlargement. In no case shall the nonconforming use be expanded by more than 50% of its original size on the date that it became nonconforming. The Comprehensive Plan designates this property for Medium Density Single Family Residential uses.
2. The subject site is 46 acres in size and is currently zoned RC-Resource Conservation. The property was previously used as a private borrow pit and construction debris landfill. In connection with that, the site has also been a material processing (sand/topsoil) operation since the late 1940s. The borrow pit operation was discontinued about 1990, but the soil screening operation continues to exist as a nonconforming use. In 1991 the applicant obtained approval for a use permit to operate a plant nursery (Peninsula Hardwood Mulch, Inc.) on a 25-acre portion of the site which operates, as a condition of the use permit, in conjunction with the nonconforming soil/materials screening operation. The plant nursery operates on the front half of the property; the soil/screening operation is conducted on the rear portion (see map). It is the soil screening activity on the rear portion of the property which the applicant would like to expand by adding mulch-processing equipment.
3. The primary reason the applicant would like to add mulch-processing equipment to the existing soil/screening operation is to consolidate his operations. The mulch-processing equipment, known as a hammer mill, takes raw tree bark and processes it into mulch for retail sale. The hammer mill is a machine that slowly, but steadily, grinds the raw course bark into a finer product. The mulch is loaded into the hammer mill, then exits via a conveyor belt system to a pile where it is readied for retail sale. The applicant currently has a hammer mill in operation at a site in Toano (upper James City County). The applicant leases the site, and it is incorporated as part of the Peninsula Hardwood Mulch, Inc., business. The finished mulch product is transported via tractor-trailer from the Toano site to the Lakeside Drive location for ultimate retail sale. According to the applicant, consolidating the operation on Lakeside Drive will allow the business to produce their mulch product more efficiently by converting the raw bark into a retail product all on one site.

¹ The Zoning Administrator determined that the applicant may request approval from the Board of Supervisors to expand an existing nonconforming use that is categorized as a recycling plant (see attached letter from J. Mark Carter to Scott L. Reichle, the applicant's legal representation).

4. Several conditions were approved as part of the 1991 use permit (for the landscape business) that, by virtue of the combined operations, have helped to mitigate the impacts of the nonconforming existing soil screening activities on the site. The use permit was approved with the understanding that the two activities – the soil screening and landscape business – would be operated jointly although the use permit conditions could not be applied directly to the nonconforming soil screen operation. Among conditions that were approved as part of the use permit process that mitigates the nonconforming soil screening activities was a requirement for a landscaped berm along the eastern portion of the property. This berm effectively screens from view the soil screening machine operation. The berm also acts as a noise barrier (the soil screening machine, known as a Trammel Mill, emits a slow but steady noise that is similar to the hammer mill in Toano). The hours of operation for the landscape business were also limited from 8 a.m. to 6 p.m. Monday through Saturday with the exception that there be no heavy machinery operation on Saturdays. Retail sales, however, are still permitted on Saturdays; but the business is not authorized to open on Sundays.

When the use permit was initially approved, there were some concerns from the surrounding neighbors about the retail portion of the operation and its potential impacts.

There was additional concern about the nonconforming soil screening activities, which were not directly affected by the 1991 landscape business use permit. However, the owner of Peninsula Hardwood Mulch met with these citizens on several occasions and successfully calmed their concerns. According to the County's Code Enforcement Supervisor, Peninsula Hardwood Mulch, Inc., has complied with the conditions of its use permit. It is worth noting that since neighbors brought up the initial concerns, there have been no reported citizen complaints. To that end, staff recommends that several of the conditions that were approved as part of the 1991 permit be applied to the applicant's current proposal for the mulch processing operation.

5. As part of the preliminary review of this request, several staff members toured the mulch processing operation and hammer mill site in Toano and the current soil screening machine/operation on Lakeside Drive. It was staff's conclusion that the hammer mill is similar to the machine used for the existing soil screening activities on Lakeside Drive in terms of the types of materials processed and equipment used. Also, the hammer mill emits a similar noise as the trammel mill, as well as similar peripheral impacts that include such things as mulch storage, additional work machinery (front-end loader), and a miscellany of employee activity that is commonly associated with the work required to produce such mulch product. Obviously, if this activity were approved for the Lakeside Drive location, it could intensify these impacts.
6. A portion of Peninsula Hardwood Mulch's total operation consists of several inbound and outbound truck deliveries. The majority of the inbound truck traffic is the tractor-trailers that are delivering the finished mulch product from the Toano site. The outbound truck traffic is mostly wholesale and retail deliveries to businesses and homeowners (most of these trucks are non-tandem dump trucks). According to the information submitted by the applicant, truck deliveries will be reduced if the operation is consolidated on the Lakeside Drive site because only the raw bark will have to be trucked inbound to the Lakeside Drive location. The finished mulch product requires more truck deliveries than does raw bark because of bulk differences between the

finished product and the raw bark. When the raw bark is brought to the Lakeside site, it would be dumped near the hammer mill machine to await processing (see "truck dump" on applicant's concept plan). In addition, the applicant is currently making return deliveries of soil products to the Toano site for wholesale and retail sale from that site (which will be discontinued) thereby further reducing truck traffic volumes. It is important to note that the traffic impacts on Lakeside Drive are expected to only marginally decrease and, therefore, are a non-factor. What's more important here is that as a result of this application, traffic volumes will not increase. However, staff has included a condition that sets a cap on the total tractor-trailer deliveries that recognizes the seasonal nature of the business. The restriction on the total deliveries proposed by staff is consistent with what can occur by right today.

7. The Zoning Ordinance provides that a nonconforming use may be expanded if authorized by the Board of Supervisors through the issuance of a special use permit. Structural expansions of nonconforming uses are limited to a maximum increase of 50% of the building floor area at the time the use became nonconforming. However, the Ordinance does not specify a limitation on the size of expansions not readily measured by building floor area (as in the case here), thus leaving the issue open for determination by the Board as a condition of the use permit approval process. Technically, with this application, it is not a question of whether there is an expansion of land area, but rather of land use or intensity. For example, the amount of area that is currently being used for the nonconforming soil screening activities, as illustrated on the conceptual plan submitted by the applicant, is the same total amount of area that will be used for the proposed mulch processing operation. The applicant is just adding another processing machine to this same area. As a result, the aggregate land area will not increase; rather the intensity of use will be modified and adjusted. Staff's recommended course of action is to prevent the existing nonconforming activity from increasing significantly in intensity, while still allowing the applicant to adjust his operation. This goal can be accomplished by approving reasonable conditions for the proposed mulch processing operation that, if implemented, could further enhance the current nonconforming use on the property.
8. Should the Board approve this request, staff suggests that the following conditions be included to help mitigate any potential impacts from the new activity on the site. Foremost, staff suggests that the existing berm (on the eastern side of the property and indicated on the applicant's conceptual plan) be tied together with a new landscaped berm that is similar in height and extends in a northerly direction beyond the work area. The entire length of the berm should be landscaped with an evergreen planting material that creates a solid screen. Extending the existing berm with landscaping material will effectively screen from view from the Winder's Pond subdivision (the closest neighbor) the addition of the new mulch processing operation and, also, will help to better screen/buffer the existing soil screening operation. It is important that the berm extension not interfere in any way with the nearby monitoring wells that are mandated as part of the mine reclamation process that is regulated by the Virginia Department of Environmental Quality. Next, staff suggests that a row of evergreen planting material be established along the western boundary of the property running parallel to the mulch processing and soil screening operations (see attached map). Finally, staff recommends the hammer mill be enclosed with a soundproofing material designed to help deaden its

noise emission level. The rest of the hammer mill operation, i.e., the conveyor belt, loading bin, etc., could be operated in the open as is normal. To accomplish this, the mulch processing operation needs to be confined to the same area as the existing soil processing activity. The attached concept plan that was submitted as part of this application does indicate all areas to be used by the mulch-processing operation, so there should be no confusion as to the magnitude of these combined operations. Staff is recommending that if the application is approved, the proposed mulch processing operation and soil-screening activities be confined to this area.

PLANNING COMMISSION RECOMMENDATION

The Commission conducted a public hearing on May 10, 2000, during which 14 people spoke against approval primarily because of concerns over traffic, noise, dust, and decreased property values. One citizen supported the applicant's proposal. The Commission subsequently recommended approval by a roll call vote of 7:0, making one change to Condition 5 of the resolution, directing the applicant to retain an expert to establish a baseline and a maximum noise level as measured around the perimeter of the property. The intent is to ensure that existing noise levels on the property do not increase as a result of this application. The staff, in consultation with the applicant, further recommends amending Condition 9 regarding the tractor-trailer traffic. Staff recommends that the limits on the tractor-trailer trip ends be measured on a weekly basis. Because of the seasonal nature of mulch processing, weekly averages will more accurately reflect the total trip ends generated by the business. This proposed change varies from the original proposed condition that would have limited tractor-trailer traffic on a 24-hour basis.

During the public hearing, the community indicated that there are three main issues that they believe are negative impacts of the existing as well as proposed operations on the subject property. As already indicated by staff, the three issues registered by the community are noise, dust, and stormwater runoff. Specifically addressing these issues, staff has proposed a berm supplemented by an evergreen screening fence that would be implemented adjacent to the Winder's Pond and Lakeside Forest subdivisions to help control the visual, as well as the noise and dust, impacts of the current soil-screening operation. In addition, staff has recommended a condition requiring the applicant to enclose the motor component of the proposed mulch-processing machine and a condition regulating the hours of operation, both of which are expected to help control the noise. To establish a method that can monitor the noise levels of the combined existing and proposed operations, staff has recommended a requirement that a baseline decibel level (derived from existing conditions) be established around the perimeter of the property. Once the baseline levels are established, the applicant will be precluded from increasing those levels.

The community, especially those who reside in the Jacob's Spring subdivision, also cited dust as a nuisance that is generated by work activity on the property. To combat the problem, staff has recommended that the applicant develop a dust management plan for the site. To comply, the applicant has mentioned that he will implement a sprinkler system designed to keep the dust to a minimum during periods of dry weather. Additionally, the mulch is periodically sprayed with water to help season the product. The third major issue noted by citizens was stormwater runoff. Staff has recommended that a stormwater management plan be developed for the entire site. The plan will reveal whether or not stormwater management facilities will be needed. If so, the applicant will be required to

comply. Finally, staff has recommended a visual screen (a berm and evergreen landscaping) be placed on either side of the proposed area of operations. The visual screens will also serve as a tool to help mitigate the noise and dust levels that are generated by the soil screening and mulch processing. It is important to note that should the Board of Supervisors elect to deny this request, the mitigation measures proposed by staff cannot be imposed on the existing operations.

COUNTY ADMINISTRATOR RECOMMENDATION

Nonconforming uses are common in all communities that have zoning controls. The goal of these localities has traditionally been to encourage these uses to ultimately conform to the community's current zoning regulations. To that end, nonconforming uses are typically discouraged from expanding. However, the courts have ruled that nonconforming uses "need not remain static." Basically, as long as the character of the use remains reasonably the same, it can adjust². In the application that Peninsula Hardwood Mulch, Inc., has proposed, staff believes that the proposed conditions in the resolution that are aimed at ameliorating the impacts of the mulch processing equipment will inhibit any potential increase in nonconformity on this large site. Consequently, the use should remain reasonably the same. What is more, the character of the use on the site, which would include both the mulch processing and soil screening activities, will not be significantly different from those activities that are now being conducted on the site. Obviously, however, if the Board feels that the combined intensity of the proposed mulch-processing equipment and the existing soil screening activity is too much for the surrounding community to bear, the request should be denied. However, it does appear that the conditions that were approved in 1991, combined with the staff's recommendations in this application, would further enhance the compatibility of the soil screening operation and the proposed mulch processing operation with the surrounding community. It should be pointed out that the applicant's respect for the surrounding community and his willingness to respond to his neighbors' concerns in a timely fashion

² See Knowlton v. Browning-Ferris Industries of Virginia, 220 Va. 571 at 576.

have allowed the business to successfully exist in the midst of a residential area. I recommend approval by the adoption of proposed Resolution R00-87.

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Attachments

- Excerpts, Planning Commission minutes 5/10/00
- Zoning Map
- Concept plan submitted by applicant
- Aerial photo site map
- Aerial photo site map indicating evergreen buffers
- Letter, J. Mark Carter to Scott L. Reichle, Esquire, 1/20/00
- Proposed Resolution No. R00-87